

The Honorable Judge Ricardo S. Martinez

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

RICK DAVIS, SR., MATHEW KOOHNS, and  
BRETT A. LOCKHART, SR., individually  
and on behalf of all others similarly situated,

**Plaintiffs,**

V.

UNITEDHEALTH GROUP  
INCORPORATED, UNITEDHEALTHCARE  
INSURANCE COMPANY,  
UNITEDHEALTHCARE OF  
WASHINGTON, INC., and UNITED  
HEALTHCARE SERVICES, INC.,

## Defendants.

CASE NO. 2:21-CV-01220-RSM

## **STIPULATED PROTECTIVE ORDER AND ORDER**

**NOTE ON MOTION CALENDAR:  
September 13, 2023**

## **1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
2 confidential information under seal.

3 The parties acknowledge that information produced in this case, regardless of its  
4 designation under this agreement, may contain personal and health information subject to the  
5 protections of, *inter alia*, the Health Insurance Portability and Accountability Act of 1996  
6 (“HIPAA”), the applicable requirements of the Standards for Privacy of Individually Identifiable  
7 Health Information and its implementing regulations issued by the U.S. Department of Health and  
8 Human Services (45 C.F.R. Parts 160-164; HIPAA Privacy Regulations), Wash. Rev. Code §  
9 70.02 *et seq.*, and Wash. Admin. Code 284-04 *et seq.* (collectively “Privacy Laws”), which protect  
10 the confidentiality of individually identifiable personal and health information. The parties agree  
11 to comply with the requirements of the Privacy Laws and any other applicable laws governing the  
12 privacy of personal and health information. The parties expressly agree that the citations to the  
13 Privacy Laws in this paragraph are for convenience only and that it remains the obligation of each  
14 party to the action to understand and comply with the obligations imposed by the Privacy Laws  
15 and any other potentially applicable federal and state law.

16 2. DEFINITIONS

17 2.1 “CONFIDENTIAL” MATERIAL:

18 “Confidential” material (regardless of how it is generated, stored, or maintained) shall  
19 include, but is not limited to, the following documents and tangible things produced or otherwise  
20 exchanged:

- 21 • Protected health information (“PHI”), as defined in 45 C.F.R. § 160.103 and 164.501,  
22 which includes, but is not limited to, health information, including demographic  
23 information, relating to either (a) the past, present, or future physical or mental  
24 condition of an individual, (b) the provision of care to an individual, or (c) the payment  
25 for care provided to an individual, which identifies the individual or which reasonably  
26 could be expected to identify the individual;

- 1     • Documents containing proprietary business information or trade secrets;
- 2     • Documents containing personal, financial, medical or other information subject to a
- 3         right of privacy; and
- 4     • Any other documents or information that should otherwise be subject to confidential
- 5         treatment pursuant to the Federal Rules of Civil Procedure.

6             Nothing in this paragraph shall be construed as overruling any other objection that a  
 7 producing party may have to a discovery request calling for information that may be encompassed  
 8 by this paragraph. The parties may agree to amend this list to specifically identify other records  
 9 that may be requested in discovery, but an amendment is not a precondition to marking other  
 10 material not specifically identified above as "Confidential."

11             2.2     "CONFIDENTIAL-ATTORNEYS' EYES ONLY" MATERIAL: information  
 12 that the designating party reasonably and in good faith believes is so highly sensitive that it should  
 13 not be disclosed to any person other than counsel for the parties in the above captioned case  
 14 because designating the information otherwise could result in significant competitive or  
 15 commercial disadvantage to the designating party. The categories of documents identified in  
 16 Section 2.1 may qualify as "Confidential\_Attorney's Eyes Only" material and may be designated  
 17 as such.

18             3.     SCOPE

19             The protections conferred by this agreement cover not only Confidential and Confidential–  
 20 Attorneys' Eyes Only material (as defined in Section 2), but also (1) any information copied or  
 21 extracted from Confidential or Confidential–Attorneys' Eyes Only material; (2) all copies,  
 22 excerpts, summaries, or compilations of Confidential and Confidential–Attorneys' Eyes Only  
 23 material; and (3) any testimony, conversations, or presentations by parties or their counsel that  
 24 might reveal Confidential or Confidential–Attorneys' Eyes Only material.

25             However, the protections conferred by this agreement do not cover the following  
 26 information: (a) any information that is in the public domain at the time of disclosure to a receiving

1 party or becomes part of the public domain after its disclosure to a receiving party as a result of  
2 publication not involving a violation of this agreement; and (b) any information known to the  
3 receiving party prior to the disclosure or obtained by the receiving party after the disclosure from  
4 a source who obtained the information lawfully and under no obligation of confidentiality to the  
5 designating party. In addition, this agreement shall not limit a party's or non-party's ability to use  
6 its own Confidential or Confidential–Attorneys' Eyes Only material for any purpose. Any use of  
7 Confidential or Confidential–Attorneys' Eyes Only material at trial shall be governed by a separate  
8 agreement or order.

9       4. ACCESS TO AND USE OF CONFIDENTIAL AND CONFIDENTIAL–ATTORNEYS'  
10      EYES ONLY MATERIAL

11       4.1 Basic Principles. A receiving party may use Confidential or Confidential–  
12 Attorneys' Eyes Only material that is disclosed or produced by another party or by a non-party in  
13 connection with this case only for prosecuting, defending, or attempting to settle this litigation.  
14 Confidential or Confidential–Attorneys' Eyes Only material may be disclosed only to the  
15 categories of persons and under the conditions described in this agreement. Confidential or  
16 Confidential–Attorneys' Eyes Only material must be stored and maintained by a receiving party  
17 at a location and in a secure manner that ensures that access is limited to the persons authorized  
under this agreement.

18       4.2 Disclosure of "CONFIDENTIAL" Material. Unless otherwise ordered by the  
19 Court or permitted in writing by the designating party, a receiving party may disclose any  
20 Confidential material only to:

21           (a) the receiving party's counsel of record in this action, as well as employees of  
22 counsel to whom it is reasonably necessary to disclose the information for this litigation;

23           (b) the officers, directors, and employees (including in house counsel) of the receiving  
24 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a  
25 particular document or material produced is considered Confidential–Attorneys' Eyes Only and is  
26 so designated;

1           (c) experts and consultants to whom disclosure is reasonably necessary for this  
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3           (d) Secretarial, paralegal, clerical, duplicating and data processing personnel of the  
4 foregoing;

5           (e) the Court, court personnel, and court reporters and their staff;

6           (f) copy or imaging services retained by counsel to assist in the duplication of  
7 Confidential material, provided that counsel for the party retaining the copy or imaging service  
8 instructs the service not to disclose any Confidential material to third parties and to immediately  
9 return all originals and copies of any Confidential material;

10          (g) during their depositions, witnesses in the action to whom disclosure is reasonably  
11 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
12 unless otherwise agreed by the designating party or ordered by the Court. Pages of transcribed  
13 deposition testimony or exhibits to depositions that reveal Confidential material must be separately  
14 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
15 agreement;

16          (h) the author or recipient of a document containing the information or a custodian or  
17 other person who otherwise possessed or knew the information.

18          4.3 Disclosure of “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” Material:

19 Unless otherwise ordered by the Court or permitted in writing by the designating party, a receiving  
20 party may disclose any Confidential–Attorneys’ Eyes Only material only to:

21          (a) the receiving party’s counsel of record in this action, as well as employees of  
22 counsel to whom it is reasonably necessary to disclose the information for this litigation;

23          (b) the receiving party’s in house counsel, with no responsibilities for network  
24 contracting or rate negotiations;

25          (c) experts and consultants to whom disclosure is reasonably necessary for this  
26 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1                   (d) Secretarial, paralegal, clerical, duplicating and data processing personnel of the  
2 foregoing;

3                   (e) the Court, court personnel, and court reporters and their staff;

4                   (f) copy or imaging services retained by counsel to assist in the duplication of  
5 Confidential–Attorneys’ Eyes Only material, provided that counsel for the party retaining the copy  
6 or imaging service instructs the service not to disclose any Confidential–Attorneys’ Eyes Only  
7 material to any person or entity outside the scope of this agreement, and to immediately return all  
8 originals and copies of any Confidential–Attorneys’ Eyes Only material;

9                   (g) during their depositions, witnesses in the action to whom disclosure is reasonably  
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
11 unless otherwise agreed by the designating party or ordered by the Court. Pages of transcribed  
12 deposition testimony or exhibits to depositions that reveal Confidential–Attorneys’ Eyes Only  
13 material must be separately bound by the court reporter and may not be disclosed to anyone except  
14 as permitted under this agreement;

15                   (h) the author or recipient of a document containing the information or a custodian or  
16 other person who otherwise possessed or knew the information.

17                  4.4 Filing Confidential or Confidential–Attorneys’ Eyes Only Material: Before filing  
18 Confidential or Confidential–Attorneys’ Eyes Only material, or discussing or referencing such  
19 material in court filings, the filing party shall confer with the designating party, in accordance with  
20 Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the  
21 confidential designation, whether the document can be redacted, or whether a motion to seal or  
22 stipulation and proposed order is warranted. During the meet and confer process, the designating  
23 party must identify the basis for sealing the specific confidential information at issue, and the filing  
24 party shall include this basis in its motion to seal, along with any objection to sealing the  
25 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
26 standards that will be applied when a party seeks permission from the court to file material under

1 seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
2 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
3 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
4 the strong presumption of public access to the Court's files.

5 **DESIGNATING PROTECTED MATERIAL**

6       5.1     Exercise of Restraint and Care in Designating Material for Protection. Each party  
7 or non-party that designates information or items for protection under this agreement must take  
8 care to limit any such designation to specific material that qualifies under the appropriate  
9 standards. The designating party must designate for protection only those parts of material,  
10 documents, items, or oral or written communications that qualify, so that other portions of the  
11 material, documents, items, or communications for which protection is not warranted are not swept  
12 unjustifiably within the ambit of this agreement. However, where it is administratively unfeasible  
13 or unduly burdensome to designate only portions of material documents, items, or communications  
14 that contain confidential information, the parties may agree to allow wholesale designation to  
15 facilitate production, with an agreement to allow for later limited designation as may be  
16 appropriate or necessary depending upon the overall relevance/importance of the information  
17 produced.

18           Mass, indiscriminate, or routinized designations are otherwise prohibited. Designations  
19 that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
20 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
21 and burdens on other parties) expose the designating party to sanctions.

22           If it comes to a designating party's attention that information or items that it designated for  
23 protection do not qualify for protection, the designating party must promptly notify all other parties  
24 that it is withdrawing the mistaken designation.

25       5.2     Manner and Timing of Designations. Except as otherwise provided in this  
26 agreement or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for

protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party, to the extent practicable, shall identify only the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within (15) fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Confidential or Confidential–Attorneys’ Eyes Only. If a party or non-party desires to protect such information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated

1 in accordance with the provisions of this agreement.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3       6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 4 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 6 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 7 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 8 original designation is disclosed.

9       6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 10 regarding confidential designations without court involvement. Any motion regarding  
 11 confidential designations or for a protective order must include a certification, in the motion or in  
 12 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
 13 with other affected parties in an effort to resolve the dispute without court action. The certification  
 14 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
 15 a face-to-face meeting or a telephone conference.

16       6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
 17 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
 18 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 19 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 20 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
 21 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
 22 the material in question as confidential until the court rules on the challenge.

23 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 24 LITIGATION

25       If a party is served with a subpoena or a court order issued in other litigation that compels  
 26 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" that party must: (a) promptly notify the

1 designating party in writing and include a copy of the subpoena or court order; (b) promptly notify  
 2 in writing the party who caused the subpoena or order to issue in the other litigation that some or  
 3 all of the material covered by the subpoena or order is subject to this agreement. Such notification  
 4 shall include a copy of this agreement; and (c) cooperate with respect to all reasonable procedures  
 5 sought to be pursued by the designating party whose Confidential or Confidential–Attorneys’ Eyes  
 6 Only material may be affected.

7       8.     UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL OR CONFIDENTIAL–  
           ATTORNEYS’ EYES ONLY MATERIAL

9       If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential  
 10 or Confidential–Attorneys’ Eyes Only material to any person or in any circumstance not authorized  
 11 under this agreement, the receiving party must immediately: (a) notify in writing the designating  
 12 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of  
 13 the Confidential or Confidential–Attorneys’ Eyes Only material; (c) inform the person or persons  
 14 to whom unauthorized disclosures were made of all the terms of this agreement; and (d) request  
 15 that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is  
 16 attached hereto as Exhibit A.

17       9.     INADVERTENT PRODUCTION OR DISCLOSURE OF PRIVILEGED OR  
           OTHERWISE PROTECTED MATERIAL

18       9.1     Obligations of Receiving Party. When a producing party gives notice to receiving  
 19 parties that certain inadvertently produced material is subject to a claim of privilege or other  
 20 protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil  
 21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
 22 established in an e-discovery order or agreement that provides for production without prior  
 23 privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d)  
 24 as set forth herein.

25       9.2     Non-Waiver. Pursuant to Federal Rule of Evidence 502(d), in the event that  
 26 privileged or otherwise protected material is produced or disclosed, such inadvertent production

1 or disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any  
2 claim of attorney-client privilege, attorney work product protection, or other applicable protection  
3 in this case or any other federal or state proceeding, provided that the producing party shall notify  
4 the receiving party in writing of such protection or privilege promptly after the producing party  
5 discovers such materials have been inadvertently produced.

6       9.3     Right To Compel Production. A party may move the Court for an order compelling  
7 production of the inadvertently produced or disclosed privileged or otherwise protected material  
8 on the ground that it is not, in fact, privileged or protected. The motion shall be filed under seal  
9 and shall not assert as a ground for entering such an order the fact or circumstance of the  
10 inadvertent production. Any effort to file under seal pursuant to this paragraph must comply with  
11 Civil Local Rule 5(g). The producing party retains the burden of establishing the privileged or  
12 protected nature of any inadvertently disclosed or produced information. While such a motion is  
13 pending, the inadvertently produced material at issue shall be treated in accordance with  
14 paragraphs 9.1 and 9.2 above.

15       9.4     Good-Faith Obligations of Receiving Party. If a receiving party, in reviewing any  
16 material it has received from any other party or any non-party, finds anything the receiving party  
17 believes in good faith may be inadvertently produced or disclosed material, the receiving party  
18 shall: (a) refrain from any further examination or disclosure of the potentially inadvertently  
19 produced or disclosed material; (b) promptly identify the material in question to the producing  
20 party (by document number or other equally precise description); and (c) give the producing party  
21 seven (7) days to respond as to whether the producing party will make a claim of inadvertent  
22 producing or disclosing. If the producing party makes such a claim, the provisions of paragraphs  
23 9.1–9.3 above shall apply.

24       10.     NON TERMINATION AND RETURN OF DOCUMENTS

25       Within 60 days after the termination of this action, including all appeals, each receiving  
26 Party must return all Confidential and Confidential–Attorneys’ Eyes Only material to the

1 producing party, including all copies, extracts and summaries thereof. Alternatively, the parties  
2 may agree upon appropriate methods of destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
6 product, even if such materials contain Confidential material.

7 The confidentiality obligations imposed by this agreement shall remain in effect until a  
8 designating party agrees otherwise in writing or a court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: September 13, 2023

11 By: /s/ Andrew Goldfarb

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24 *Attorneys for Plaintiffs*

1 DATED: September 13, 2023

2 By: /s/ Heather L. Richardson

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26 *Attorneys for Defendants*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED  
2

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
4 documents, electronically stored information (ESI) or information, whether inadvertent or  
5 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
6 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
7 documents, including the attorney-client privilege, attorney work-product protection, or any other  
8 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum  
9 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
10 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
11 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
12 segregation of privileged and/or protected information before production. Information produced  
13 in discovery that is protected as privileged or work product shall be immediately returned to the  
producing party.

14  
15 DATED: September, 14, 2023  
16



17  
18 RICARDO S. MARTINEZ  
19 UNITED STATES DISTRICT JUDGE  
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**EXHIBIT A**

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its  
y and understand the Stipulated Protective Order that was issued by the United States  
et Court for the Western District of Washington on [date] in the case of *RICK DAVIS, SR.*,  
. *UNITEDHEALTH GROUP INCORPORATED, et al.*, Case No. 2:21-CV-01220-RSM. I  
to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
stand and acknowledge that failure to so comply could expose me to sanctions and  
ument in the nature of contempt. I solemnly promise that I will not disclose in any manner  
formation or item that is subject to this Stipulated Protective Order to any person or entity  
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name:

Signature: